

not adequate to meet requirements for contingency measures.

Subsequent to the initiation of the lawsuit, EPA learned that LDEQ did not interpret the Act to require emission reductions to be discounted to reflect all emission reductions required under the Act, at time of their use, and that LDEQ did not discount ERCs in the Louisiana ERC Bank at time of their use. In part, based on this new information, on October 6, 2000, the parties to the lawsuit filed a joint motion for a partial voluntary remand of EPA's approval of Louisiana's contingency measure plan for the Baton Rouge ozone nonattainment area, and for a stay of all proceedings of the lawsuit (the "joint motion"). On October 19, 2000, the Court granted the joint motion.

Louisiana has been working to develop a new State Implementation Plan (the "new SIP") for the Baton Rouge ozone nonattainment area. The minimum requirements for SIP submissions are described in 40 CFR part 51. As part of the new SIP, EPA expects Louisiana to submit a new ozone attainment demonstration for the Baton Rouge ozone nonattainment area. The ozone attainment demonstration must document the photochemical modeling procedure used to determine the impacts of both local and regional control measures, must document modeling results, and, to the extent necessary to attain the ozone standard, must document additional control measures that Louisiana has selected. Any additional control measures must be reflected through adopted emission control regulations.

The Settlement Agreement provides that: (1) Tulane Environmental Law Clinic (on behalf of LEAN) will file a motion to dismiss the lawsuit in its entirety, with prejudice to its refile, within five (5) days after the Settlement Agreement becomes effective; (2) EPA and LDEQ has met and/or will meet with representatives from LEAN to discuss the proper modeling and attainment protocols to calculate and assess the attainment demonstration in the new SIP for the Baton Rouge ozone nonattainment area; and (3) the United States will reimburse LEAN \$34,000 in full satisfaction of any claim for attorney's fees and costs that was or could have been asserted in connection with the lawsuit.

LDEQ published notice of the Settlement Agreement in the Louisiana Register (0106Pot2) on June 20, 2001. The notice specified that, to be considered, comments had to be received by July 13, 2001. LDEQ did not

receive substantial adverse comment, and LDEQ has opted to proceed with the Settlement Agreement.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed Settlement Agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed Settlement Agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, following the comment period, that consent is inappropriate, the Settlement Agreement will be final.

Dated: October 1, 2001.

**Alan W. Eckert,**

*Associate General Counsel.*

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## ENVIRONMENTAL PROTECTION AGENCY

[CO-001-0066; FRL-7082-3]

### Adequacy Status of the Denver, Colorado PM<sub>10</sub> Maintenance Plan for Transportation Conformity Purposes

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of adequacy.

**SUMMARY:** In this document, EPA is notifying the public that we have found that the motor vehicle emissions budgets in the Denver particulate matter of 10 micrograms in size or smaller (PM<sub>10</sub>) maintenance plan submitted on July 30, 2001, are adequate for conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the Denver Regional Council of Governments, the Colorado Department of Transportation and the U.S. Department of Transportation are required to use the motor vehicle emissions budgets from this submitted maintenance plan for future conformity determinations.

**DATES:** This finding is effective October 29, 2001.

**FOR FURTHER INFORMATION CONTACT:** Kerri Fiedler, Air & Radiation Program

(8P-AR), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, (303) 312-6493.

The letter documenting our finding is available at EPA's conformity website: <http://www.epa.gov/oms/transp/conform/adequacy.htm>.

#### SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," "us," or "our" are used we mean EPA.

This action is simply an announcement of a finding that we have already made. We sent a letter to the Colorado Air Pollution Control Division on September 20, 2001 stating that the motor vehicle emissions budgets in the submitted Denver PM<sub>10</sub> maintenance plan are adequate. This finding has also been announced on our conformity Web site at <http://www.epa.gov/oms/transp/conform/adequacy.htm>.

Transportation conformity is required by section 176(c) of the Clean Air Act. Our conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from our completeness review, and it also should not be used to prejudice our ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved, and vice versa.

We've described our process for determining the adequacy of submitted SIP budgets in a memo entitled, "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision," dated May 14, 1999. We followed this guidance in making our adequacy determination.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: October 4, 2001.

**Andrew M. Gaydosh,**

*Acting Regional Administrator, Region VIII.*

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